

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DELVIN HUPFER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 222,019
<b>KANSAS BRICK &amp; TILE COMPANY, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on July 14, 1997, reinstating his earlier Order of June 24, 1997. The original Order of June 24, 1997, had been set aside to allow for consideration of the deposition of Eldred Maresch. After considering that additional deposition, the Administrative Law Judge reaffirmed his original Order granting claimant's request for medical treatment. The Order did not grant temporary total disability benefits because claimant is off work due to subsequent unrelated cardiac complaints.

**ISSUES**

Respondent contends the Administrative Law Judge exceeded his jurisdiction by granting benefits when the record does not establish that claimant sustained an accidental injury arising out of and in the course of employment, claimant did not give notice as required by K.S.A. 44-520, and claimant did not make timely written claim as is required by K.S.A. 44-520a.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

The Board so finds for the reasons stated in the detailed findings and conclusions by the Administrative Law Judge which are hereby adopted by the Appeals Board as its own. The Administrative Law Judge has relied principally on claimant's testimony. Having reviewed that testimony, the Appeals Board agrees that, if believed, claimant's testimony establishes both accidental injury arising out of and in the course of employment through September 13, 1996, as well as timely notice and timely written claim. The fact that notice preceded September 13, 1996, the last day worked, does not, in our view, render the notice inadequate. The Appeals Board generally defers to the evaluation of credibility by the administrative law judge concerning a witness who appeared in person before that administrative law judge. The Board has done so here. The Appeals Board has also relied, in significant part, upon the May 15, 1997, letter report from Dr. Vello Kass. Dr. Kass states that the work for respondent has accelerated claimant's degenerative back problems.

**WHEREFORE**, the Appeals Board finds that the Order by Administrative Law Judge Bruce E. Moore, dated July 14, 1997, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1997.

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BOARD MEMBER

c: Patrik W. Neustrom, Salina, KS  
C. Stanley Nelson, Salina, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director